Soon Aik Marine & Engineering Pte Ltd v 'Hoesheng' (Owners of) (Central Provident Fund Board, Intervener)

HIGH COURT (SINGAPORE) – ADMIRALTY SUIT NO 6 OF 1986
CHAN SEK KEONG JC
27 MARCH 1987

Civil Procedure – Admiralty jurisdiction – Action by CPF Board to recover arrears of CPF contributions of seamen from proceeds of sale of ship – Whether court has jurisdiction to hear CPF Board's claim – Whether CPF Board has right to sue as trustee for unpaid contributions – CPF Board has stepped into shoes of seamen – CPF Board's claim in substance the claim of seamen – Central Provident Fund Act (Cap 121, 1970 Ed), s 35 – High Court (Admiralty Jurisdiction) Act 1961 (Cap 6, 1970 Ed), s 3(1)(n)

Shipping – Admiralty action between shipowners and ship repairers – Intervention by CPF Board to recover arrears of CPF contributions of seamen from proceeds of sale of ship – Whether court has jurisdiction to hear CPF Board's claim – Whether CPF Board has right to sue as trustee for unpaid contributions – CPF Board has stepped into shoes of seamen – CPF Board's claim is in substance claim of seamen – Central Provident Fund Act (Cap 121, 1970 Ed), s 35 – High Court (Admiralty Jurisdiction) Act 1961 (Cap 6, 1970 Ed), s 3(1)(n)

Public Authorities – Action by CPF Board to recover arrears of CPF contributions of seamen from proceeds of sale of ship – Whether court has jurisdiction to hear CPF Board's claim – Whether CPF Board has right to sue as trustee for unpaid contributions – Section 35 of Central Provident Fund Act (Cap 121, 1970 Ed) not an enabling provision conferring capacity on CPF Board to sue – CPF Board has stepped into shoes of seamen – CPF Board's claim is in substance claim of seamen – Central Provident Fund Act (Cap 121, 1970 Ed), s 35 – High Court (Admiralty Jurisdiction) Act 1961 (Cap 6, 1970 Ed), s 3(1)(n)

The plaintiffs commenced an admiralty action against the defendants for cost of repairs carried out to the defendants' ship. A warrant of arrest was issued and following the arrest, the vessel was sold under an order of court. The defendants were subsequently wound up by an order of court and the CPF Board ('the board') was unable to recover the arrears of CPF contributions of the crew members from the proceeds of sale because of a ship mortgage in favour of the mortgagee-interveners. On an application to the court, the assistant registrar gave leave to the board to intervene in the proceedings for the purpose of claiming against the proceeds of sale of the ship. The mortgagee-interveners then applied to set aside this order of the assistant registrar. The main grounds advanced by the mortgagee-interveners in support of the application were that (a) the board is only a trustee of the moneys in the fund and not a trustee of unpaid or future CPF contributions and therefore it has no right to sue as trustee for unpaid or future contributions. Any such right the board has is by virtue solely of s 35 of the CPF Act which changed the fundamental nature of the claim of the board from wages to a government debt under the Government Proceedings Act (Cap 21, 1970 Ed); (b) though CPF contributions formed part of the wages of the seamen, the court does not have jurisdiction to determine and hear the board's claim because s 3(1)(n) of the High Court (Admiralty Jurisdiction) Act 1961 ('the 1961 Act') permits only the master and the crew to do so.

Held, dismissing the mortgagee-interveners' application:

(1) The board is a statutory body as well as a trustee of the fund. The board was a trustee of the fund even before there were any moneys in it. As the board is entitled to payment, it must perforce have a right to sue for payment.

(2) Section 35 of the CPF Act is otiose if its intention is to confer a capacity on the board to sue or be sued. The section is intended to confer priority on any sum due to the fund to the same extent that a debt due to the government has priority by virtue of the Government Proceedings Act. There is nothing in the language of s 35 which affects or diminishes the rights of the board in relation to the recovery of CPF contributions under the general law or which purports to change the nature of the statutory debt (or any privilege or right, eg a lien, incidental to such debt). Section 35 is intended to extend and extends to the scope of recovery of arrears of CPF contributions and is entirely consistent with the object of the provident fund scheme established by the CPF Act.

(3) The claim of the board comes within the terms of s 3(1)(n) of the 1961 Act. By reason of its status and obligations under the CPF Act, the board as trustee has effectively stepped into the shoes of those seamen for whom CPF contributions are payable. The claim of the board is in substance the claim of the members of the crew and the claim by the board as trustee is a claim, as it were, by the alter ego of each affected member.

(4) The mortgagees should not be allowed to obtain payment out of the balance of the fund without giving effect to the prior rights of the board.

Cases referred to

1 *The Fairport (No 3)* [1966] 2 Lloyd's Rep 253 (distd)
2 *The Westport (No 4)* [1968] 2 Lloyd's Rep 559 (distd)
3 *The Halcyon Skies* [1976] 1 Lloyd's Rep 461 (distd)
4 *Parry* v *Cleaver* [1970] AC 1 (refd)
5 *The Fairport* [1965] 2 Lloyd's Rep 183 (distd)
6 *Beswick* v *Beswick* [1968] AC 58 (refd)
7 *The Acrux* [1965] 1 Lloyd's Rep 565 (distd)
8 *The Tojo Maru* [1972] AC 242 (refd)
9 *The Conoco Britannia* [1972] 2 QB 543 (refd)

Legislation referred to

Bankruptcy Act (Cap 18, 1970 Ed) s 58(1)
Central Provident Fund Act (Cap 121, 1970 Ed) ss 3, 4(7), 6(1), (2), (5), 7(1), (2), 11(2), 12-18, 35, 38
Civil Law Act (Cap 30, 1970 Ed) s 4(6)
Companies Act (Cap 185, 1970 Ed) s 328(1)(e)
Government Proceedings Act (Cap 21, 1970 Ed) ss 10(1), (2)
High Court (Admiralty Jurisdiction) Act (Cap 6, 1970 Ed) ss 1(1), 3(1)(n)
Administration of Justice Act 1956 [UK] s 1(1) (o)
Bankruptcy Act [UK] s 38(b)
Supreme Court Act 1981 [UK] s 20(1)(n)

M Karthigesu for the CPF Board.
Steven Chong for the mortgagee-interveners.
Govind for the crew interveners.

Cur Adv Vult

Chan Sek Keong JC: This is an application by the mortgagee-interveners ('the mortgagees') to set aside the order of the assistant registrar giving leave to Central Provident Fund Board ('the board'), a statutory board

established under the Central Provident Fund Act (Cap 121, 1970 Ed) ('the CPF Act'), to intervene in these proceedings for the purpose of claiming against the proceeds of sale of the vessel 'Hoesheng'. The board's claim is for recovery of Central Provident Fund contributions ('CPF contributions') due to certain members of the crew from the owners of the vessel.

The relevant facts are that on 4 January 1986, the plaintiffs commenced this admiralty action against the owners of the vessel 'Hoesheng' for the cost of repairs carried out to it during April 1985 to November 1985; a warrant of arrest was issued on the same day and duly served on the vessel on 6 January 1986. Following this arrest, the vessel together with the lubricating and gas oil on board was sold under an order of court and realized the sum of $1,004,092. Various sums have been paid out by orders of court leaving a balance of $90,000 to be claimed by the board and the mortgagees.

It is common ground that the members of the crew for whose account or benefit the board is making this claim are employees and the owners of the 'Hoesheng' are their employers within the meaning of those expressions in the CPF Act and that the said owners were wound up by order of court on 28 February 1986. Although s 328(1)(e) of the Companies Act (Cap 185, 1970 Ed) gives priority to CPF contributions in a limited amount in a winding up, the board was unable to recover such arrears in the winding up because of the ship mortgage in favour of the mortgagees; hence, the board's intervention in these proceedings.

Both counsel for the board and the mortgagees have also agreed that for the purpose of this application CPF contributions are to be regarded as part of the wages of the affected seamen on the authorities of *The Fairport (No 3)*,[1] *The Westport (No 4)*[2] and *The Halcyon Skies*.[3] In these cases, contributions towards provident funds and pension funds, both contractual or voluntary, were accepted by the courts as wages of employees. It can hardly be doubted that in Singapore, CPF contributions are part of the total wages an employer is prepared to pay for the services of an employee (see also Lord Reid in *Parry* v *Cleaver*[4] at p 16).

Counsel, however, had a difference of opinion as to whether the board's claim for arrears of wages was a claim for damages for breach of contract (of employment) or a claim for a debt. Counsel for the board referred to *The Halcyon Skies*[3] as authority for the proposition that such claim lies in damages whereas counsel for the mortgagees argued that it lies in debt, and he referred to *The Fairport (No 3)*[1] and *The Westport (No 4)*.[2] In my view, the distinction in the cause of action is not relevant in the present case. In the English actions, the claims were founded on breaches of contracts of employment. Brandon J, in *The Halcyon Skies*,[3] after analysing the decisions of Karminski J in *The Fairport (No 3)*[1] and *The Westport (No 4)*[2] and also Hewson J's decision in *The Fairport*,[5] came to the conclusion that the cause of action in each of those cases and in *The Halcyon Skies*[3] was for damages for breach of contract to pay wages. Plainly, this must be so where a contract of employment existed. His Lordship then went on to hold that the admiralty jurisdiction in wages had long extended to claims founded in damages as well as in debt and that such claims were claims for wages within the meaning of s 1(1)(o) of the Administration of Justice Act 1956 ('the 1956 Act') (now replaced by s 20(1)(n) of the Supreme Court Act 1981), which is in pari materia with s 3(1)(n) of the High Court (Admiralty Jurisdiction) Act 1961 (Cap 6, 1970 Ed) ('the 1961 Act').

In the present case, the claim of the board is for arrears of CPF contributions which (as we shall see) the employer is, by statute, liable to pay to a statutory fund, of which the board is a statutory trustee, established for the benefit of the employees. The liability of the employer to pay CPF contributions vis-à-vis the board is founded in statute and not in contract. The board's claim cannot therefore lie in damages for breach of contract but must perforce be for recovery of a statutory debt.

The CPF Act came into force on 1 July 1955. It established the board as a corporate body with perpetual succession (ss 3 and 4(7)). It also established the CPF fund into which shall be paid all contributions authorized under the Act and out of which shall be met all payments authorized under the Act (s 6(1)). An employer is required by law to pay CPF contributions in respect of each of his employees at rates prescribed from time to time, consisting of one part from him and one part from the employee (s 7(1)). The employer is entitled to recover the employees' contributions from the monthly wages of the employee by deducting therefrom the amount recoverable from the employee (s 7(2)). Withdrawals by members of the fund of moneys credited to their respective accounts as to amounts, purposes and times of withdrawals are regulated under ss 12-18. The board is expressly appointed the trustee of the fund (s 6(2)) and is required to credit to each member of the fund the amount of every contribution paid (by collection or recovery) to the fund for him and interest paid by the board from time to time under the Act (s 11(2)). The amount in the fund that is credited to a member belongs to him absolutely. The board is given power to invest the moneys in the fund in trustee investments and buildings and is also imposed with a statutory obligation to pay interest at a prescribed minimum rate or such higher rate approved by the Minister. The repayment of moneys credited to each member is statutorily guaranteed by the government as it must provide loans to the board if the

board does not have sufficient funds to pay withdrawals by members; such loans have to be repaid to the government (s 6(5)). The board may sue for and recover any sum due to the fund as if it were a debt due to the government (s 35).

It is clear that the statutory scheme of a provident fund does not give the employee the right to sue his employer for payment to himself of CPF contributions payable in accordance with the CPF Act. Correspondingly, the employer has no right to pay CPF contributions directly to the employee or set it off against the employee's debts except under s 7(2). However, where an employee has contracted to pay CPF contributions as prescribed by the CPF Act as a term of a contract of employment, the employee may sue for specific performance of that term for the benefit of the fund: see *Beswick* v *Beswick*.[6]

Counsel for the board submitted that ss 6, Part III (ss 12-18), 35 and 38 of the CPF Act make it clear that the board is a trustee not only of the fund but also of each individual member thereof and that, as such, the board is entitled to invoke the admiralty jurisdiction of this court to recover arrears of CPF contributions due to members of the crew. It was also contended that the primary purpose of s 35 was to give priority to the board's claim as if it were a government debt and not to enable the board to sue in its own name.

Two main grounds were advanced by counsel for the mortgagees in support of the application: firstly, it is said that the board is not a maritime claimant in that its claim is an in personam claim against the owners of the ship; secondly, whilst conceding that arrears of CPF contributions formed part of the wages of the seamen concerned, counsel for the mortgagees contended that this court does not have jurisdiction to determine and hear the board's claim because s 3(1)(n) of the 1961 Act permits only the master and the crew to do so.

Two other subsidiary arguments were made: (a) that the board is only a trustee of the moneys in the fund and not a trustee of unpaid or future CPF contributions; therefore it has no right to sue as trustee for unpaid or future contributions: any such right the board has is by virtue solely of s 35 which, by its terms, has changed the fundamental nature of the claim of the board from wages (ie CPF contributions as part of wages) to a government debt under the Government Proceedings Act (Cap 21, 1970 Ed).

I do not accept the subsidiary arguments of counsel for the mortgagees. The board is a statutory body as well as a trustee of the fund. The board was a trustee of the fund even before there were any moneys in it. As the board is entitled to payment, it must perforce have a right to sue for payment. As trustee, the board has an obligation to recover arrears of CPF contributions for the benefit of the affected employees. Section 35 of the CPF Act is otiose if its intention is to confer a capacity on the board to sue or be sued.

What then is the purpose of s 35 which provides as follows:

> Any sum due to the fund may be sued for and recovered by the board under the Government Proceedings Act (Cap 21) as if it were a debt due to the Government.

In my view, s 35 is not an enabling provision in regard to the board's capacity to sue as otherwise it would have used the normal expression 'to sue and be sued', but is intended to confer priority on any sum due to the fund to the same extent that a debt due to the government has priority by virtue of the Government Proceedings Act. There is nothing in the language of s 35 which affects or diminishes the rights of the board in relation to the recovery of CPF contributions under the general law or which purports to change the nature of the statutory debt (or any privilege or right, eg a lien, incidental to such debt). Section 35 is intended to extend and extends the scope of recovery of arrears of CPF contributions and is entirely consistent with the object of the provident fund scheme established by the CPF Act. The scheme is a compulsory national savings scheme for employees and is of vital importance to the welfare of employees and their families. To ensure that employees' savings in the fund belong and will be available to them absolutely, the legislature has not only guaranteed their repayment but has provided that members' funds before and after withdrawal from the fund are not assignable or transferable or liable to be attached or sequestrated or levied up for or in respect of any debt or claim whatsoever (s 15(1)) and further provided that this immunity shall continue to apply even when a member becomes bankrupt (s 17). The same object is found in s 38.

Section 10(1) of the Government Proceedings Act provides that debts due to the government are entitled from the date of accrual thereof to a preference of payment over all debts subsequently contracted by such person to any other person and sub-s (2) provides that this priority shall not affect any right vested in any mortgagee or chargee of immovable property. Movable property is excluded from sub-s (2). By implication, the priority under s 10 affects or appears to affect the rights of the mortgagee of a ship belonging to the same debtor in respect of loans or advances made after wages are in arrears. In the present proceedings, counsel for the board has conceded that the claim of the mortgagees is for advances made before the accrual of the unpaid CPF contributions and therefore the board's claim has no priority over that of the mortgagees. In an appropriate case where the board's claim has priority by virtue of s 10(1), it will be necessary to ask whether and in what

manner the board's claim can be given effect to in admiralty proceedings.

I now come to the vital issue as to whether this court may entertain the claim of the board in the exercise of its admiralty jurisdiction. Omitting the inapplicable paragraphs, s 3(1) of the 1961 Act provides as follows:

> The admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims:—
>
> ...
>
> (n) *any claim by a* master or *member of the crew of a ship for wages* and any claim by or in respect of a master or member of the crew of a ship for any money or property which, under any of the provisions of the Merchant Shipping Ordinance is recoverable as wages or in the court and in the manner in which wages may be recovered together with any other jurisdiction connected with ships or aircraft which may be vested in the court apart from this section. (emphasis mine)

Counsel for the mortgagees says that as the board's claim is not a claim by a member of the crew, the court has no jurisdiction to entertain it. Counsel for the board says that the intention of s 3(1) is to define the court's jurisdiction by reference to the nature of the claim rather than the character of the claimant. Neither counsel referred me to any authority on the intention or construction of para (n).

The matter is, however, not entirely res integra. In *The Acrux*,[7] the ship had been sold under an order of the English Admiralty Court. She was an Italian ship and the owners were in arrears of insurance contributions for her officers and crew which by Italian law, were payable to a body incorporated under such law, the Cassa Nationale della Previdenza Marinara ('CNPM'), which had the function of carrying out the function of providing social insurance benefits to, inter alia, seamen employed on Italian vessels. Employers had to pay both their own and their employees' contributions and if they failed to do so, the employee's benefits would be proportionately reduced. Under Italian law, CNPM was also given a maritime lien against the ship for unpaid contributions for a period of three years only. CNPM commenced an action in rem claiming the arrears of contributions against the proceeds of sale. The Banca Di Sicilia, as mortgagees of the ship, intervened. Hewson J held: (1) the unpaid contributions were not emoluments under the Merchant Shipping Act and were therefore not wages; (2) section 1(1)(o) of the 1956 Act permitted the master and the crew, and them alone, to sue but not CNPM; (3) a claim for unpaid social insurance contributions which, although it was a maritime lien under Italian law, did not give rise to a maritime lien under English law.

In relation to the right of CNPM to sue in rem, Hewson J at p 568 said as follows:

> The latter part of that section (3(1)(o)) is restricted to money or property recoverable under any of the Merchant Shipping Acts. For example, under s 35(2) of the Merchant Shipping Act 1906, expenses attendant on the illness, hurt or injury of a seaman and, under s 42(1)-(2), expenses for the relief of a distressed seaman may be recovered in the manner in which wages may be recovered.
>
> As I read the provisions of s 1(1)(o), wages may be sued for by the master or any member of the crew and by them alone, and expenses such as I have mentioned, or property, may be sued for in rem either by the seaman or on his behalf.
>
> Mr Bateson, in the course of his spirited argument, admittedly found that these provisions were a stumbling block to his claim. There are no provisions in any statute to which my attention has been called which specifically give a right to any person, including the Minister of Pensions and National Insurance, to sue in rem for unpaid insurance contributions either as wages or as a form of civil debt. Section 54 of the National Insurance Act 1946 provides:
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> '(1) All sums due to the National Insurance Fund shall be recoverable as debts due to the Crown, and without prejudice to any other remedy may be recovered by the minister summarily as a civil debt.'
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> In my view, unless a right in rem for such recovery is expressly given in plain terms to the minister, I am not disposed to find that the legislature so intended. Perhaps it is worthy of note in passing that the National Insurance Act was passed in 1946 and the Administration of Justice Act was not passed until ten years later, yet there is no reference in the latter Act to these contributions.

In relation to the argument that under Italian law the plaintiff had a right in rem against the ship equivalent to a maritime lien, Hewson J said that the plaintiff's claim was not recognized as a maritime lien under English law, and that he was:

> unable to stretch this court's equitable jurisdiction to include it; that is a matter for the legislature or, it may be, some higher court. No case has been quoted to show, much as I desire to do it, that I may enlarge the jurisdiction to benefit the foreign claimants when English claimants have no similar benefits conferred upon them.

The last sentence appears to refer to the lack of capacity to sue in rem of the Minister of Pensions and National Insurance.

In *The Fairport*,[5] a similar point was again argued before Hewson J. The plaintiffs were the master, officers and crew and the Greek Seamen's Pension Fund (NAT), a Greek statutory body, and the Pan Hellenic Seamen's Federation (PNO), a Greek trade union. The question was whether the NAT of the master, officers and crew and the PNO may claim in rem for unpaid contributions to its pension fund and for trade union dues respectively, including those who were paid off before the writ was issued and consequently not plaintiffs in the action. His Lordship found on the facts that the contributions claimed by NAT and PNO were deductions made by the master from the seamen's gross wages and that the sea-

men, if so advised, could have claimed them as wages. He observed that s 1(1) of the 1956 Act did not give the court admiralty jurisdiction to entertain a claim by a social service or a trade union organization against the fund: see *The Acrux*.[7] However, he found it unnecessary to decide whether NAT and PNO, as plaintiffs, could claim the contributions due to them as wages. He also declined to distinguish *The Acrux*[7] on the facts as he was able to allow the claims in another way. On the basis that the master was accountable to NAT and PNO for the deductions he had made from the gross wages of the crew in respect of contributions to NAT and PNO, Hewson J directed that the master's claim should include all such deductions, as if 'these moneys were notionally lying in his strong box on board the ship'; he then ordered that the said sums be paid out to the plaintiffs' solicitors for payment to the Royal Hellenic Consulate General, Mercantile Marine Service, London, to the account of NAT and PNO.

I have the following observations to make on the decisions in *The Acrux*[7] and in *The Fairport*.[5] Firstly, Hewson J in *The Acrux*[7] held that the social insurance contributions payable under Italian law were not part of wages. The claim was therefore not a claim for wages under s 1(1)(o) of the 1956 Act. The decision is therefore not an authority for the proposition that a social organization may not claim wages (assuming that such contributions are wages). His statements that any social organization or the Minister of Pensions and National Insurance could not sue in rem for unpaid social insurance as wages were therefore obiter. That this was the position is made clear in *The Fairport*[5] where his Lordship declined to decide this very point and acquiesced in counsel's proposal to leave the point open for future argument. Secondly, in *The Acrux*,[7] Hewson J, after deciding that the claim was not one for wages, went on to consider whether the claim of CNPM was a maritime lien. If the said claim had been recognized as a maritime lien, his Lordship would or might have given effect to it, under either para (o) as a claim for wages or its pre-existing admiralty jurisdiction as preserved by s 1(1) of the 1956 Act. Thirdly, the solution found by Hewson J in *The Fairport*[5] is not available to this court on the facts of this case and in view of my interpretation of the CPF Act. Under the CPF Act, the master has no right to make nor is there any evidence to show that he has made any deductions for CPF contributions from the gross salaries of members of the crew; he therefore cannot be held accountable for the arrears of CPF contributions. Fourthly, the claims of CNPM and any claim of the Minister for Pensions and National Insurance were claims to contributions payable to them absolutely, in return for which the contributors were entitled to certain social benefits whereas all CPF contributions belong to the employees and the board is merely a trustee for them on a fully guaranteed basis.

In *The Acrux*[7] and *The Fairport*,[5] Hewson J took the view that if s 1(1)(o) had intended to allow persons (eg the Minister of Pensions and National Insurance) other than the master and the crew to claim wages, it would have so provided, bearing in mind that the 1956 Act was passed ten years after the National Insurance Act 1946. So likewise, it may also be argued in this case that the 1961 Act was passed about six years after the CPF Act and no mention is made in the former Act to allow a claim by the board for CPF contributions as wages.

In the circumstances of this case, I do not feel able to follow his Lordship's approach to the construction of the 1961 Act. Firstly, I do not think that the legislature in enacting the 1961 Act intended any more than to keep up with legal developments in England in relation to admiralty matters. Secondly, anyone familiar with the history of Singapore must know that in 1961, if the legislature had any intention regarding the rights of employees, it would have been to increase and protect them rather than to diminish them. Therefore, I am not persuaded that the legislature's omission to provide expressly that the board may claim for wages in admiralty is a manifestation of its intention not to allow the board to claim as such.

In principle, I can find no reason for interpreting the first part of para (n) literally, notwithstanding that the different and wider wordings of the second part may point to the contrary or that para (o) is also and, it may be argued, deliberately worded like the first part of para (n). To so interpret para (n) is, by the same process, to decide that the wages of the master and the crew are not assignable under s 4(6) of the Civil Law Act (Cap 30, 1970 Ed); for if they are so assignable, the assignee would still not be able to claim under para (n) on a literal interpretation thereof. Whether or not such wages and the maritime liens incidental thereto would have been recognized by the admiralty courts does not appear to have been authoritatively settled: see *Thomas on Maritime Liens* 1980, para 479. I find it highly improbable that the legislature has by the wording of para (n), intended either to declare that under the law administered by the Admiralty Courts in England both seamen's and master's wages are unassignable or to decide, by a side-wind, that they are not assignable. The legal assignment of choses generally has been permitted by statue since the Judicature Act 1873. Unless there is a binding authority against such assignment, there would seem to be no public policy consideration against the assignment of wages of the master and the crew, and with it the maritime lien. Equity has always allowed assignments of choses in action. As the learned editors have stated in *Halsbury's Laws of England*, 4th Ed, para 303: 'In the last hundred years the development of English maritime law has continued to be greatly influenced by changes in concepts of the common law, and to regard it as constituting today a system of law

entirely separate from the general law may lead to error' or as Lord Diplock has wisely said in *The Tojo Maru*[8] at p 291: 'No court is an island in itself.'

It is unnecessary for me to decide whether seamen's wages or masters' wages are assignable. If para (n) does not declare or decide that they are unassignable, then I only need to consider para (n) on the hypothesis that they may be assignable. On this basis, an assignee's claim can only be given effect to by this court in the exercise of its admiralty jurisdiction under para (n) unless the claim is treated as a claim for a maritime lien, which the court could then entertain in the exercise of its jurisdiction under the 'sweeping up' provision in s 1(1) of the 1961 Act. DR Thomas appears to be of the opinion that para (o) of s 1(1) of the 1956 Act 'leaves untouched the rights of an assignee under a valid assignment of the rights of a master or seaman' (see *Thomas on Maritime Liens*, para 303 note 8). Ubi jus ubi remedium. This suggests para (n) was probably intended to vest jurisdiction in the court to determine and hear claims in respect of the wages of a master or a member of the crew. In this connection, it is pertinent to note that Part V of the 1956 Act which deals with the admiralty jurisdiction of the courts in Scotland confers jurisdiction to deal with any claim arising out of 'liability for payment of wages ... of a master or member of the crew of a ship'.

Whatever the law may be as regards the assignability of the wages of the master or the crew, I have come to the conclusion that the claim of the board comes within the terms of para (n). By reason of its status and obligations under the CPF Act, the board as trustee has effectively stepped into the shoes of those seamen for whose benefit CPF contributions are payable. Unlike the claim of a social organization like the CNPM or that of the Minister for Pensions and National Insurance in England, both of whom claim for themselves absolutely, the claim of the board is in substance the claim of the members of the crew and the claim by the board as trustee is a claim, as it were, by the alter ego of each affected member.

The status of the board is no different from that of the Official Assignee claiming on behalf of a bankrupt seaman by virtue of s 58(1) of the Bankruptcy Act (Cap 18, 1970 Ed) or that of the trustee in bankruptcy in England under s 38(b) of the Bankruptcy Act 1914: see *Thomas on Maritime Liens* at p 274, para 484 as to the rights of a trustee in bankruptcy. There is no reason to doubt that the Official Assignee in Singapore or the trustee in bankruptcy in England may not claim in place of a bankrupt seaman under the relevant provisions of the 1961 Act and the Supreme Court Act 1981 respectively. Indeed, the status of the board as a claimant of CPF contributions is, in an important respect, superior to that of other assignees at law or by operation of law in that, although all of them are derivative in nature, the board's claim is not subject to any right of set-off or counterclaim against the employees.

I am aware that my decision will result in a division of rights and judicial remedies in that the maritime lien or the action in rem in respect of the wages of the crew are vested in both the crew and the board. Substantive rights must prevail over procedural difficulties. Hewson J in *The Acrux*[7] did not appear to have any difficulty with this problem when he dealt with (but denied) the claim of CNPM to a maritime lien independently of that of the members of the crew.

In the circumstances, it is unnecessary for me to decide whether this court could have entertained the board's claim in exercise of its admiralty jurisdiction existing prior to 1961 and vested in it by the Colonial Courts of Admiralty Act 1890 or under its equitable jurisdiction (see *The Conoco Brittannia*[8] at p 544), to ensure that the mortgagees should not be allowed to obtain payment out of the balance of the fund without giving effect to the prior rights of the board.

The mortgagees' application is accordingly dismissed. There will be a reference to the registrar to determine the amount payable to the board and for payment out to the board of the amount so determined from the balance of the fund in court after the costs of the board and the mortgagees in this application and the reference before the registrar have been taxed and paid from the said fund.

Application dismissed.

Solicitors: *Cooma Lau & Loh & M Karthigesu*; *Drew & Napier*.

Reported by *Ng Sheau Jiuan*